

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

QUEST INTEGRITY USA, LLC,

Plaintiff,

v.

A.HAK INDUSTRIAL SERVICES US,
LLC,

Defendant.

CASE NO. C14-1971RAJ

ORDER

I. INTRODUCTION

This matter comes before the court on review of Plaintiff's motion for a preliminary injunction and various motions and requests to seal that are ancillary to that motion. In light of this order, the court directs the clerk to TERMINATE all pending motions (Dkt. ## 36, 42, 47, 65) and to CREATE A MOTION CALENDAR for May 15, 2015, to correspond to the noting date of the last of those motions. The clerk shall entitle that motion calendar "Plaintiff's Motion for Preliminary Injunction, Motions to Seal, and Plaintiff's Motion to Exclude Testimony of Dr. Leonard Bond."

II. BACKGROUND

A. Litigation Summary

Plaintiff Quest Integrity USA, LLC ("Quest") seeks to enjoin Defendant A.Hak Industrial Services US, LLC ("A.Hak") from infringing United States Patent 7,542,874 B2 (the '874 Patent). Quest provides inspection services for oil refinery "furnace tubes," which are serpentine tubes that wrap around a refinery furnace. Furnace tubes contain

1 petroleum products heated to high temperatures during the refining process. Refineries
2 must periodically clean furnace tubes, and inspect them after cleaning. Quest (like others
3 in the industry) uses “pigs,” devices that travel along the inside of furnace tubes, to
4 inspect the tubes. The ‘874 Patent covers methods of displaying the data compiled from
5 pigs in a way that allows technicians to identify the location of defects or other problems
6 in the furnace tubes. Quest claims that its patented display technology is a substantial
7 improvement over other display technologies, which cannot pinpoint the location of
8 problems in the tubes.

9 Whereas Quest focuses its business on furnace tube inspection, A.Hak provides a
10 broader range of services to the petroleum industry. Furnace tube inspection is just a part
11 of A.Hak’s business.

12 According to Quest, A.Hak and two other entities have begun using display
13 technology that infringes the ‘874 Patent. According to Quest, that has or will have
14 disastrous consequences for its business. Although Quest claims to dominate the market
15 for furnace tube inspection in large refinery operations, it has less presence at smaller
16 refineries, which typically cannot afford expensive inspection technology. Nonetheless,
17 Quest has made efforts to discount its prices to expand its presence in that niche. A.Hak
18 and the other entities are thwarting those efforts by offering lowball prices to smaller
19 refineries for services that allegedly use Quest’s patented display technology. Quest also
20 claims that it is losing customers as a result of the prices A.Hak and the other entities are
21 offering. It claims that money cannot compensate it for the lost business opportunities,
22 lost market share, and price erosion that is the result of this unlawful competition.

23 Quest sued A.Hak and the other two entities and filed motions for preliminary
24 injunctions.¹ As to the latter two entities, Quest sued in the United States District Court
25 for the District of Delaware. Last month, that court denied Quest’s motion for a

26 ¹ Quest sued in this court in late December 2014, withdrew a motion for preliminary injunction
27 that it filed in January 2015, then agreed to a briefing schedule on a new motion for injunction
28 under which the parties did not complete briefing until May 2015.

1 preliminary injunction. *Quest v. Clean Harbors Indus. Servs., Inc.*, Civ. Nos. 14-1482-
2 SLR, 14-1483-SLR, 2015 U.S. Dist. LEXIS 76696 (D. Del. Jun. 12, 2015). That court
3 found that although Quest had made a prima facie showing of infringement, *id.* at *15,
4 the defendants had raised a substantial question as to the validity of the '874 Patent, *id.* at
5 *21. Putting aside Quest's likelihood of succeeding on the merits of its infringement
6 claim, the court concluded that Quest had proven neither irreparable harm nor a threat of
7 irreparable harm. *Id.* at *21-23.

8 Quest's arguments for a preliminary injunction here mirror those it made in the
9 Delaware litigation, and A.Hak's defenses appear to be the same as those that the
10 Delaware defendants asserted. To reach even that preliminary observation, however, the
11 court had to contend with extensive redactions to the briefs that Quest submitted in
12 support of its injunction motion. It is those redactions, plus hundreds of other requests
13 for redaction or to seal documents in their entirety, that are the focus of this order.

14 **B. Motions to Seal and Other Requests to Redact and Seal Documents**

15 The parties submitted more than 3,000 pages of documents in support of or in
16 opposition to Quest's motion for an injunction. That is unprecedented, at least in this
17 court. Also unprecedented are the hundreds of requests for redaction and to seal
18 documents in their entirety. What leads to this order, however, is another request that is
19 also a first for this court: Quest asks that if the court rules that any of these documents is
20 to be unsealed or unredacted, it be permitted to withdraw its motion for preliminary
21 injunction rather than reveal the sealed or redacted information.

22 To put that final request in context, the court observes that the parties have filed
23 only two motions to seal. The first (Dkt. # 36), from Quest, targeted the brief in support
24 of its motion for injunction as well as two declarations in support of that motion. The
25 second (Dkt. # 47), from A.Hak, targeted the brief in support of its opposition to the
26 injunction motion, as well as three declarations supporting it. A.Hak did not file that
27 motion to protect material that it wished to keep under seal, it filed it because Quest

1 asserted that the material was confidential. Quest later filed a declaration from its
2 General Manager, Richard Roberts, in support of that request. He declared that none of
3 the more than 40 redactions to the opposition brief were necessary, but insisted on more
4 than 50 redactions and requests to seal material in the declarations. Finally, Mr. Roberts
5 filed another declaration² with more than 100 requests to seal or redact Quest's reply
6 brief and three declarations supporting it. All told, Quest continues to insist on more than
7 250 redactions and requests to seal documents.

8 III. ANALYSIS

9 This District's local rules and Ninth Circuit law recognize a "strong presumption"
10 in favor of public access to court records. *Kamakana v. City & County of Honolulu*, 447
11 F.3d 1172, 1178 (9th Cir. 2006); Local Rules W.D. Wash. LCR 5(g). A court cannot
12 allow documents to remain under seal unless it articulates its reasons for doing so. *Apple*
13 *Inc. v. Psystar Corp.*, 658 F.3d 1150, 1162 (9th Cir. 2011) (vacating order sealing,
14 without explanation, documents submitted in support of injunction motion). In general,
15 the party seeking to shield litigation documents from public view must show "compelling
16 reasons" for doing so, and the court must balance the reasons the party articulates against
17 the public's interest in understanding the judicial process, the general preference for
18 access and disclosure, and other policies favoring disclosure. *Kamakana*, 447 F.3d at
19 1178-79. So far as the court is aware, the Ninth Circuit itself has articulated only a single
20 exception to the "compelling reasons" standard applicable in ordinary civil litigation.
21 That exception applies to materials exchanged in discovery that a party deems
22 confidential, when those materials are used in connection with a non-dispositive motion.
23 *Id.* at 1179-80. When that exception applies, a party need only make a "particularized
24 showing" to meet the "good cause" standard of Federal Rule of Civil Procedure 26(c).
25 *Id.* (quoting *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)).

26
27 ² Mr. Roberts stated that his declaration was in support of "Quest's Motion for Permission to File
28 Documents Under Seal (PI Reply)," but Quest filed no motion to seal in support of its reply.

1 To the extent Quest argues that it can avoid application of the “compelling
2 reasons” standard to its preliminary injunction motion, the court rules that it cannot. The
3 court’s review of the briefs alone shows that much of the material Quest seeks to shield
4 from public view is critical to its request for an injunction. Most of the redactions that
5 Quest has insisted upon relate not to protecting the display technology at issue, but rather
6 to protecting information about Quest’s business, including information about its market
7 share, pricing strategies, staffing levels, and details of the business it allegedly lost as a
8 result of A.Hak’s infringement. Quest relies on that information to support its assertion
9 that it will suffer irreparable harm absent an injunction, because it will suffer lost market
10 share, price erosion, loss of goodwill, and other adverse impacts on its business that
11 monetary damages cannot remedy. Assuming that Quest’s showing of a likelihood of
12 success on the merits is not so weak that the court can avoid considering harm altogether,
13 the court’s decision on the injunction motion will depend on Quest’s showing of
14 irreparable harm. Even if the court concludes that Quest’s case on the merits is weak, it
15 might well take the approach of the Delaware court, and assess irreparable harm to
16 buttress a ruling that no injunction should issue. In short, the material that Quest seeks to
17 seal (or much of it) is essential to the public’s understanding of the basis for issuing or
18 not issuing an injunction. For all of the same reasons that the “compelling reasons”
19 standard applies to material supporting a dispositive motion, it applies to at least the vast
20 majority of the redactions and requests to seal that Quest has put before the court.

21 The court applies the “compelling reasons” standard because it is the default,
22 because the analysis in *Kamakana* compels that result, and because the Ninth Circuit has
23 been reluctant to limit its application to motions merely because they are technically non-
24 dispositive. *See, e.g., In re Midland Nat’l Life Ins. Co. Annuity Sales Practices Litig.*,
25 686 F.3d 115, 1120 (9th Cir. 2012) (concluding that district court erred by failing to
26 apply “compelling reasons” standard to a *Daubert* motion). The Ninth Circuit has not, so
27 far as the court is aware, considered the application of the “compelling reasons” standard

1 to material supporting a request for a preliminary injunction. District courts have come
2 to different conclusions. *E.g.*, *Yountville Investors, LLC v. Bank of Am., N.A.*, No. C08-
3 425RSM, 2009 U.S. Dist. LEXIS 16516, at *5 (W.D. Wash. Feb. 17, 2009) (“A motion
4 for a preliminary injunction is treated as a dispositive motion”); *Interdigital Tech.*
5 *Corp. v. Pegatron Corp.*, No. 15-CV-02584-LHK, 2015 U.S. Dist. LEXIS 88806, at *3
6 (N.D. Cal. Jul. 7, 2015) (“This Court, and others in this district, have applied the
7 ‘compelling reasons’ standard in deciding parties’ requests to seal materials submitted in
8 connection with motions for preliminary injunction.”); *Hanginout, Inc. v. Google, Inc.*,
9 No. 13cv2811 AJB (NLS), 2014 U.S. Dist. LEXIS 40429, at *2-3 (S.D. Cal. Mar. 24,
10 2014) (applying “good cause” standard after noting that a “motion for preliminary
11 injunction . . . is not a dispositive motion”).

12 Based solely on the court’s review of Quest’s redactions to the briefs it submitted
13 to support its injunction motion, it is virtually certain that the court will order that Quest
14 must withdraw many of those redactions. The court could identify many of those
15 redactions now, but the balancing that it must conduct will benefit from reaching a
16 determination as to whether Quest can obtain an injunction. Moreover, the court has yet
17 to wrestle with the hundreds of requests to redact or seal material contained in documents
18 supporting the injunction briefs. It suspects, however, that it will order Quest to
19 withdraw a substantial number of those redactions, and that it will deny a substantial
20 number of Quest’s request to seal documents.

21 Ordinarily, the court would not issue an order informing a party that unspecified
22 rulings on requests to redact and seal are forthcoming. The court takes a different
23 approach here for two reasons. First, much of the material that Quest has sealed it has
24 also designated “attorneys’ eyes only,” which is to say that A.Hak itself has not seen the
25 redacted and sealed material. If the court unseals documents or orders that redactions be
26 withdrawn, A.Hak will see that material. Second, Quest has requested that if the court
27 decides not to permit the documents to be redacted or filed under seal, the court withdraw

1 the documents from the record rather than unseal them. The District's local rules permit
2 Quest to take that approach. LCR 7(g)(6). Taken literally, Quest requests that if the
3 court decides to unseal or unredact *any* of the material it submitted, it be permitted to
4 withdraw its injunction motion rather than have the information revealed.³

5 As noted, it is all but certain that the court will rule that it will not seal or redact a
6 substantial portion of the information that is the subject of Quest's motion. The court
7 will issue a ruling on the documents that will be unsealed and the redactions that will not
8 be permitted before ruling on the injunction motion. Because the court's review reveals
9 that the requests to seal are inextricably intertwined with the resolution of the injunction
10 motion, that ruling will take some time. If, as its motion suggests, Quest is more
11 committed to keeping information confidential than it is in obtaining a ruling on the
12 merits of its preliminary injunction motion, the court urges Quest to consider
13 withdrawing its injunction motion now.

14 IV. CONCLUSION

15 The "compelling reasons" standard applies to all or most of the hundreds of
16 requests to redact or seal that Quest has submitted. The court is likely to deny many of
17 the request to seal or redact that Quest has submitted. Quest should consider whether to
18 amend its request to withdraw its motion if the court unseals or unredacts anything, or
19 whether to withdraw its motion for injunction in light of the court's likely ruling.

20 For purely administrative purposes, the court will consolidate the pending motions
21 into a single motion calendar. The court directs the clerk to TERMINATE all pending
22 motions (Dkt. ## 36, 42, 47, 65) and to CREATE A MOTION CALENDAR for May 15,
23 2015, to correspond to the noting date of the last of those motions. The clerk shall entitle
24

25 ³ Quest's request to withdraw documents rather than have them unsealed comes only in its initial
26 motion to seal, which applies only to material supporting its initial brief on its injunction motion.
27 Mot. to Seal (Dkt. # 36) at 12. Because Quest filed no other motion to seal, it is not clear
28 whether the request applies to the remainder of Quest's requests to redact or seal. The court
assumes that it does, although Quest is welcome to clarify the record.

1 that motion calendar “Plaintiff’s Motion for Preliminary Injunction, Motions to Seal, and
2 Plaintiff’s Motion to Exclude Testimony of Dr. Leonard Bond.”

3 DATED this 23rd day of July, 2015.

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7 The Honorable Richard A. Jones
8 United States District Court Judge
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